

**No. 857.**

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**SUPREME COURT OF THE UNITED STATES.**

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**October Term, 1914.**

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The James Clark Distilling Company, Appellant,  
vs.  
The Western Maryland Railway Company and the  
State of West Virginia.

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**Appeal from the District Court of the United States  
for the District of Maryland.**

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**BRIEF FOR APPELLANT.**

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**Statement of the Case.**

This case differs in no material respect from The James Clark Distilling Company, Appellant, vs. The American Express Company and the State of West Virginia, No. 858, this term. The history of the cases throughout is the same. For that reason we shall content ourselves with a brief statement of the present case, referring to our brief in No. 858 for a full discussion.

Plaintiff, The James Clark Distilling Company, filed separate bills in equity in the court below against The Western Maryland Railway Company (the present case), and The American Express Company (No. 858), to compel the carriage by the companies, of its product from Cumberland, Maryland, to consignees in West Virginia.

The bill in this case (R. 1) charges that defendant, a carrier engaged in interstate commerce, has refused to accept from plaintiff at its place of business in Cumberland, Maryland, shipments of intoxicating liquors purchased from plaintiff at Cumberland, for transportation and delivery to the purchasers at stations on defendant's line in Grant, Tucker and Mineral Counties, West Virginia. It is alleged that the shipments made and to be made by plaintiff were and are intended for the personal use of the consignees and not for illegal sale or other illegal use. That the only reason given by defendant for its refusal to carry and deliver such shipments was that it had been enjoined by the circuit court of Tucker County, West Virginia, from delivering liquors except on conditions so burdensome as to make the delivery impossible. It is charged that said injunction furnished no legal excuse for defendant's refusal to transport plaintiff's product in interstate commerce.

The bill shows that defendant's continued refusal to transport plaintiff's product constitutes an irreparable injury to plaintiff's business, involving more

than the jurisdictional amount of \$3,000.00, for which plaintiff has no adequate remedy at law; and constitutes a violation of sections 1 and 3 of the Act to Regulate Commerce, by subjecting plaintiff to undue and unreasonable discrimination.

The answer (R. 10) admits the material allegations of fact contained in the bill, but refers to certain provisions of the statutes of West Virginia and to the Act of Congress of March 1, 1913, known as the Webb-Kenyon Law, as justifying its refusal to accept the particular shipment mentioned in the bill and other shipments from plaintiff to consignees in Grant, Tucker and Mineral Counties, West Virginia.

In paragraph 9 the answer further states in effect that on or about the 10th day of August, 1914, the state of West Virginia, by Fred O. Blue, State Commissioner of Prohibition, filed a bill in equity against defendant in the Circuit Court of Tucker County, West Virginia, before a judge having jurisdiction throughout the counties of Mineral, Grant and Tucker, based upon the act of the legislature of West Virginia above referred to and upon the acts of Congress known as the Wilson Act and the Webb-Kenyon Act of March 1, 1913, praying for an order restraining defendant from shipping any liquors from Maryland into said three counties in West Virginia, except upon compliance with certain specified requirements. The answer then sets forth the terms of the injunction issued against defendant by the Circuit Court of Tucker County, and attaches a

copy of said bill of complaint of the state of West Virginia, and of said order of injunction as Exhibits No. 1 and 2 to the answer. The answer alleges that defendant, under said injunction, cannot, as a practical matter, transport any liquors in interstate commerce from the state of Maryland to said three counties in West Virginia because said injunction requires defendant, in connection with the transportation of said liquors, to comply with conditions which are physically and financially impossible; especially in that said injunction requires defendant before accepting any such interstate shipments of liquor for transportation, to first ascertain by acting in good faith, and with due diligence and caution, that such liquors offered for shipment were ordered by the consignees for their lawful, personal use, without solicitation on the part of the consignor and without the intention by any person interested therein to be received, possessed, sold or in any manner used in violation of any law of West Virginia; and in that said injunction forbids defendant from delivering any such liquors when the same have been procured by the consignee for himself and others associated with him to be received or kept for the purpose of use or gift as a beverage or for any distribution or division among the consignee and those associating with him, etc.

Paragraph 11 alleges that in order to continue the transportation of liquors in compliance with said injunction, defendant would be required to main-

tain a force of detectives and investigators at an intolerable expense, for the purpose of ascertaining the intentions of the consignees in respect to the use of such liquors. The answer therefore states that so long as said injunction is in force defendant will continue to refuse all said shipments whether or not they are claimed to be lawful under the laws of West Virginia and the federal law, and that defendant has so notified plaintiff and others offering such shipments.

The evidence shows that the injunction was issued in vacation, ex parte; that the railroad company filed no answer and no motion to dissolve, but upon the issuance of the injunction did not attempt to carry shipments in accordance with its terms, but abandoned the business entirely (R. 41).

The state of West Virginia filed an intervening petition (R. 29) and was made a party (R. 32); relying upon the provisions of the state statute, the Wilson Law and the Webb-Kenyon Law, the petition set forth the proceedings instituted in the circuit court of Tucker County against the railroad company (R. 18), and prayed that the relief sought by plaintiff to establish its right to ship in interstate commerce for personal use be denied.

The transcript of evidence (R. 33) shows that this case and No. 858 were heard as one case. Certain exhibits to testimony printed in this record are not duplicated in the record in No. 858 but are referred to.

Appellee, the State of West Virginia, contended in the court below that the railroad company could not

legally deliver interstate shipments of liquor to consignees in West Virginia for their personal use, because by the law of West Virginia such delivery constituted an illegal sale at the place of delivery. The lower court, after rejecting this contention (R. 48, 50), adopted it by its final decree in deference to the opinion of the Circuit Court of Appeals for the Fourth Circuit in *State of West Virginia vs. Adams Express Company*, 219 Fed. 794 (R. 53). By objections incorporated into the decree (R. 52) and by the assignments of error we contended and contend here, that the court below improperly construed the West Virginia law and the Webb-Kenyon Law, and that the construction given them renders them unconstitutional under the commerce clause of the Constitution of the United States.

For the convenience of the court we have bound with this brief a pamphlet containing the Prohibition Amendment and the Prohibition Law of West Virginia, together with certain regulations and interpretations thereof, issued by the State Tax Commissioner, who is by the law *ex officio* State Commissioner of Prohibition.

For the reasons set forth in our brief in No. 858 we respectfully submit that the decree be reversed.

Lawrence Maxwell,  
Joseph S. Graydon,  
Walter C. Capper,  
J. Phillip Roman,  
Counsel for Appellant.







# Prohibition Amendment

AND THE

## Prohibition Law

OF

WEST VIRGINIA



Rules, Regulations, Forms and Interpretations



EFFECTIVE JULY 1, 1914



Copies hereof may be had upon application to the  
office of State Tax Commissioner  
Charleston, West Va.

TRIBUNE PRINTING CO., CHARLESTON, W. VA.



## CONTENTS.

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Prohibition Amendment.....	4
Webb-Kenyon Law.....	4
Postal Regulations.....	4-5
State Prohibition Law.....	5-17
Interpretations.....	17-22
Forms—Retail Druggists.....	22-23
Physicians' Prescription.....	24
Justices of Peace.....	25-32
Rules and Regulations.....	32-34
Digest of Prohibition Law.....	34-43

## FOREWORD.

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This pamphlet is issued for the purpose of aiding those interested in, or connected with, the enforcement of the prohibition amendment and the prohibition law of the State.

It is recognized that many questions will arise not touched upon in this pamphlet. In respect to such questions correspondence is invited.

The general subjects, as classified herein, are set forth in the table of contents, to which attention is now here directed.

*Fred. O. Blue*

State Tax Commissioner.

Charleston, West Virginia,  
February 17, 1914.

Amendment of Section 46, Article 6 of the State Constitution, ratified by vote of the people at general election held in the month of November, 1912, known as the

### **PROHIBITION AMENDMENT.**

"Sec. 46. On and after the first day of July, one thousand nine hundred and fourteen, the manufacture, sale and keeping for sale of malt, vinous or spirituous liquors, wine, ale, porter, beer or any intoxicating drink, mixture or preparation of like nature, except as hereinafter provided, are hereby prohibited in this State. Provided, however, that the manufacture and sale and keeping for sale of such liquors for medicinal, pharmaceutical, mechanical, sacramental, and scientific purposes, and the manufacture and sale of denatured alcohol for industrial purposes may be permitted under such regulations as the legislature may prescribe. The legislature shall, without delay, enact such laws, with regulations, conditions, securities and penalties as may be necessary to carry into effect the provisions of this section."

An Act of Congress of the United States known as the

### **WEBB-KENYON LAW.**

"An Act divesting intoxicating liquors of their interstate character in certain cases."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

### **POSTAL REGULATIONS—PARCELS POST.**

The regulations of the United States Postal Department prohibit the shipment of intoxicating liquors by mail;—the language of the rule being as follows:

"There shall be prohibited from the mails all spirituous, vinous, fermented or other intoxicating liquors of any kind".—Section 16, paragraph 2, Parcels Post Regulations.

Chapter 13, Acts of the Legislature of 1913, known as the

## STATE PROHIBITION LAW.

(House Bill No. 8 by Mr. Yost.)

AN ACT to prohibit the manufacture, sale and keeping for sale of malt, vinous or spirituous liquors, wine, porter, ale, beer or any intoxicating drink, mixture or preparation of like nature, except the manufacture, sale and keeping for sale for medicinal, pharmaceutical, mechanical, sacramental or scientific purposes, and the manufacture and sale of denatured alcohol for industrial purposes as regulated and provided for by this act; and to enforce the amendment of section forty-six of article six of the state constitution, ratified on the fifth day of November, one thousand nine hundred and twelve; and making the state tax commissioner *ex officio* state commissioner of prohibition, and defining his duties; and providing for the enforcement of this act and prescribing penalties for violations thereof.

(Passed February 11, 1913. In effect July 1, 1914. Approved by the Governor February 17, 1913.)

### SEC.

1. Word liquors construed.
2. Manufacture, sale, etc., of liquors forever prohibited; except.
3. Penalty for violation; when a misdemeanor; when a felony; form of indictment deemed sufficient.
4. Exceptions, druggists; physicians; prescription; affidavit; penalty for giving to persons of intemperate habits; form of indictment against druggist.
5. Person of intemperate habits or other person use other than stated in affidavit; penalty; if physician of intemperate habits—or without making examination, penalty.
6. Persons assisting in maintaining club house, etc., where liquor is received or kept, sold, given away or divided, penalty.
7. Keeping or giving away.
8. Advertise.
9. Justice of the peace, courts, mayor shall issue warrant, when.
10. Probable cause.
11. When liquors are seized, *prima facie* evidence shall be publicly destroyed.

### SEC.

12. Officers may break open house, when.
13. Payment of United States tax *prima facie* evidence of guilt.
14. Nuisance, who guilty.
15. State tax commissioner *ex officio* state commissioner of prohibition.
16. Duty of commissioner.
17. Suit in equity may be instituted; injunction, etc.
18. In addition to penalties, bond may be required.
19. Express and railroad companies, etc., shall keep books and record names of persons to whom liquor is shipped.
20. Who may employ attorney to assist in prosecution.
21. Rewards.
22. State right to appeal.
23. Police powers.
24. Sale by manufacturer and wholesale druggist under supervision of commissioner.
25. Sections inconsistent repealed.
26. In effect, when.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The word "liquors" as used in this act shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act; and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing so much as one-half of one per centum of alcohol by volume, shall be deemed spirituous liquors, and all shall be embraced in the word "liquors," as hereinafter used in this act.

Sec. 2. Except as hereinafter provided, the manufacture, sale, keeping or storing for sale in this state, or offering or exposing for sale of liquors or absinthe or any drink compounded with absinthe are forever prohibited in this state, except liquors manufactured prior to July first, one thousand nine hundred and fourteen, and stored in United States bonded warehouses in the custody of the United States collector of internal revenue, and the said liquors when tax paid and in transit from such warehouses to points outside of this state.

Sec. 3. Except as hereinafter provided, if any person acting for himself, or by, for or through another shall manufacture or sell or keep, store, offer or expose for sale; or solicit or receive orders for any liquors, or absinthe or any drink compounded with absinthe, he shall be deemed guilty of a misdemeanor for the first offense hereunder, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned in the county jail not less than two nor more than six months; and upon conviction of the same person for the second offense under this act, he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is the first or second offense; and if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same on the trial; and any person, except a common carrier, who shall act as the agent or employe of such manufacturer or such seller, or person so keeping, storing, offering or exposing for sale said liquors, or act

as the agent or employe of the purchaser of such liquors, shall be deemed guilty of such manufacturing or selling, keeping, storing offering or exposing for sale, as the case may be; and in case of a sale in which a shipment or delivery of such liquors is made by a common, or other carrier, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent or employe.

An indictment for any first offense under this section shall be sufficient if in the form or effect following:

State of West Virginia,

County of..... to-wit:

In the Circuit Court of..... County:

The grand jurors in and for the body of the said county of ....., upon their oaths do present that A. B., within one year next prior to the finding of this indictment, in the said county of....., did unlawfully manufacture, sell, offer, keep, store and expose for sale and solicit and receive orders for liquors, and absinthe and drink compounded with absinthe, against the peace and dignity of the state.

Sec. 4. The provisions of this act shall not be construed to prevent any one from manufacturing for his own domestic consumption wine or cider; or to prevent the manufacture from fruit grown exclusively within this state of vinegar and non-intoxicating cider for use or sale; or to prevent the manufacture and sale at wholesale to druggists only of pure grain alcohol for medicinal, pharmaceutical, scientific and mechanical purposes, or wine for sacramental purposes by religious bodies; or to prevent the sale and keeping and storing for sale by druggists of pure grain alcohol for mechanical, pharmaceutical, medicinal and scientific purposes, or of wine for sacramental purposes, by religious bodies, or any United States pharmacopœia or national formulary preparation in conformity with the West Virginia pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, and the sale of which does not require the payment of a United States liquor dealer's tax. But no druggist shall sell any such grain alcohol except for medicinal, scientific, pharmaceutical and mechanical purposes, or wine for sacramental purposes, except as hereinafter provided, and the same shall not be sold by such druggist for medicinal purposes, except upon a written prescription of a physician of good standing in his profession and not of

intemperate habits, or addicted to the use of any narcotic drug, prescribing the amount of alcohol, the disease or malady for which it is prescribed, and how it is to be used, the name of the person for whom prescribed, the number of previous prescriptions given by such physician to such person within the year next preceding the date of such prescription, and stating that the same is absolutely necessary for medicine, and not to be used as a beverage, and that such physician, at the time such prescription was given, made a personal examination of such person, and that such person is known to such physician to be of temperate habits and not addicted to the use of any narcotic drug, and only one sale shall be made upon such prescription, and such prescription shall be at all times kept on file by such druggist and open to the inspection of all state, county, and municipal officers. It shall be the duty of such druggist to register in a book kept for that purpose all prescriptions from physicians mentioned in this section, stating the name of the party for whom prescribed, the date of the prescription, the name of the physician by whom the prescription is issued, the quantity of such alcohol and the use for which prescribed, and such record shall at all times be open to the same inspection as such prescriptions.

It shall be lawful for a druggist to sell grain alcohol for pharmaceutical, scientific and mechanical purposes, or wine for sacramental purposes by religious bodies, only to any person, not a minor, and who is not of intemperate habits, or addicted to the use of narcotic drugs, who shall, at the time and place of such sale, make an affidavit in writing signed by himself before such druggist, or a registered pharmacist at the time and place in the employ of such druggist, stating the quantity and the time and place and fully for what purpose and by whom such alcohol or wine is to be used; that affiant is not of intemperate habits or addicted to the use of any narcotic drug; and that such alcohol or wine is not to be used as a beverage, or for any purpose other than that stated in such affidavit. Such affidavit shall be filed and preserved by such druggist and be subject to inspection at all times by any state, county or municipal officer, and a record thereof made by such druggist in the record book mentioned in this section, showing the date of the affidavit, by whom made, the quantity of such alcohol, or wine, and when, where, for what purpose and by whom to be used. Only one sale shall be made upon such affidavit,



and only in the county where the same is made, and no greater quantity than is therein specified. For the purpose of this act, any druggist or registered pharmacist making such sale shall have authority to administer such oath.

If any druggist, owner of a drug store, registered pharmacist, clerk or employe shall upon such prescription or affidavit, or otherwise, knowingly sell or give any such alcohol or wine to any person who is of intemperate habits or addicted to the use of any narcotic drug, or knowingly sell or give the same to any one to be used for any purpose other than that named in said affidavit or prescription, or who shall sell or give away any liquors without such affidavit or prescription, he shall be deemed guilty of a misdemeanor and punished by fine of not less than one hundred nor more than five hundred dollars and confined in the county jail not less than thirty days nor more than six months. In any prosecution against a druggist, owner of a drug store, registered pharmacist, clerk or employe, for selling or giving liquor contrary to law, if a sale or gift be proven, it shall be presumed that the same was unlawful in the absence of satisfactory proof to the contrary and the presentation of such prescription or affidavit by the defendant at the time of the trial for such sale or gift, shall be sufficient to rebut the presumption arising from the proof of such sale or gift. *Provided*, the jury shall believe, from all the evidence in the case, that such sale or gift was made in good faith under the belief that such prescription or affidavit and statements therein were true; and, *provided, further*, that such druggist, owner of a drug store, registered pharmacist, clerk or employe shall have complied with all other provisions of this act relating to the sale or gift.

An indictment against any druggist, registered pharmacist, clerk or employe, for any offense committed under the provisions of this section, shall be sufficient, if in the form and effect following:

State of West Virginia,

County of....., to-wit:

In the Circuit Court of said County:

The grand jurors in and for the body of said county of.....  
 ....., upon their oaths do present that A. B., within  
 one year next prior to the finding of this indictment, in the said  
 county of....., did unlawfully sell, give, offer,

expose, keep and store for sale and gift, liquors, against the peace and dignity of the state.

Sec. 5. If any person who is of intemperate habits or addicted to the use of any narcotic drug shall make the affidavit mentioned in the preceding section, or if any person making such affidavit shall use as a beverage, or for any purpose, or at any place other than that stated in such affidavit, or shall knowingly permit another to do so, said alcohol or wine, or any part thereof, or shall knowingly make any false statement in such affidavit, he shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than one hundred nor more than five hundred dollars, and be confined in the county jail not less than two nor more than six months for the first offense hereunder; and for the second offense he shall be deemed guilty of a felony and punished by confinement in the penitentiary not less than one nor more than five years.

And if any physician who is not in good standing in his profession or who is of intemperate habits, or who is addicted to the use of any narcotic drug, shall issue any such prescription as is mentioned in the last preceding section; or if any physician shall issue such prescription without, at the time, making a personal examination of the person for whom the liquor is prescribed, or shall prescribe for any person who is in the habit of drinking to intoxication and whom he knows, or has reason to believe is in the habit of drinking to intoxication, or shall give such prescription and make the statements therein required, or any part thereof, falsely, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars and imprisoned in the county jail not less than thirty days nor more than six months, and in addition thereto, for the first offense under this statute, the court may, in its discretion, suspend the license of such physician for a period of six months and for each offense thereafter the court shall suspend such license for a period of six months.

Sec. 6. Every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist or abet in keeping or maintaining any club house, or other place in which any liquor is received or kept for the purpose of use, gift, barter or sold as a beverage, or for distribution or division among the members of any club or association by any means whatsoever; and every person who shall use, barter, sell or give away,

or assist or abet in bartering, selling or giving away any liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by fine of not less than one hundred nor more than five hundred dollars and by imprisonment in the county jail not less than thirty days nor more than six months; and in all cases the members, share-holders or associates in any club or association mentioned in this section, shall be competent witnesses to prove any violations of the provisions of this section, or of this act, or of any fact tending thereto; and no person shall be excused from testifying as to any offense committed by another against any of the provisions of this act by reason of his testimony tending to criminate himself, but the testimony given by such person shall in no case be used against him.

Sec. 7. The keeping or giving away of intoxicating liquors, or any shifts or devices whatever, to evade the provisions of this act, shall be deemed an unlawful selling within the provisions of this act.

Sec. 8. If any person shall advertise or give notice by signs, bill board, newspapers, periodicals or otherwise for himself or another of the sale or keeping for sale of liquors, or shall circulate or distribute any price-lists, circulars or order blanks advertising liquors or publish any newspaper, magazine, periodical or other written or printed papers, in which such advertisements or notices are given, or shall permit any such notices, or any advertisement of liquors (including bill boards) to be posted upon his premises, or premises under his control, or shall permit the same to so remain upon such premises, he shall be guilty of a misdemeanor and be fined not less than one hundred nor more than five hundred dollars.

Sec. 9. Every justice of the peace and every circuit, criminal or intermediate court, or the judges thereof in vacation, and every mayor of any city, town or village, upon information made under oath or examination that any person is manufacturing, selling, offering, or exposing, keeping or storing for sale or barter, contrary to law, any liquors, or that the affiant has cause to believe and does believe that such liquors so manufactured, sold, offered, kept or stored for sale or barter in any house, building or other place named therein, contrary to the provisions in this act, shall issue his warrant requiring the person suspected to be brought before him for examination, or the said house, building or other place to be searched, and the parties found therein to be arrested and brought before him as aforesaid; and requiring the officer to whom it is directed to summon such witnesses as

shall be therein named, or whose names are endorsed thereon to appear and give evidence on the examination, and in the same warrant shall require the officer to whom it is directed to seize and hold all liquors found therein, also vessels, bar fixtures, screens, glasses, bottles, jugs and other appurtenances apparently used in the sale, keeping or storing of such liquors contrary to law.

Sec. 10. If, upon examination of such person, it shall appear to such justice, court, judge or mayor, that there is probable cause to believe him guilty of the offense charged, the accused shall be required to enter into a recognizance, with sufficient securities, in the sum of not less than five hundred dollars, to appear before the next term of the circuit or criminal or intermediate court of the county having jurisdiction, to answer an indictment if one be preferred against him; and upon his failure to enter into such recognizance, the justice, court, judge or mayor shall commit him to jail to answer such indictment. All material witnesses shall also be recognized, with or without sureties, as such justice, court, judge or mayor may deem proper, to appear before the grand jury at the next term of such court and give evidence against the accused, and such justice, court, judge or mayor shall require the accused to give bond with sufficient security in the sum of five hundred dollars conditioned that he will not violate any of the provisions of this act during the time intervening between the date of such bond and the adjournment of the next grand jury term of said circuit or criminal or intermediate court of the county; and upon his failure to give such bond, the justice, court, judge or mayor shall commit him to jail until such bond is given or until he is discharged therefrom by the circuit or intermediate court of the county.

Sec. 11. Whenever liquors shall be seized in any room, building or place which has been searched under the provisions of this act, the finding of such liquors in such room or of a government license therein shall be *prima facie* evidence of the unlawful selling and keeping and storing for sale of the same by the person, or persons, occupying such premises, or by any person named in any government license posted in such room, or his associates, agents or employes thereunder, and the proprietor or other persons in charge of the premises where such liquor was found, or who is so named in such government license, and his associates, shall be subject to trial by due process of law on the charge of selling or keeping or storing for sale unlawfully such liquor, under the indictment and form prescribed in section three of

this act, and upon his conviction of selling, offering, storing or exposing for sale such liquor unlawfully, the liquor found upon said premises shall at once be publicly destroyed by some responsible person to be appointed by the court.

Sec. 12. If in such house, building or place, as is hereinbefore mentioned, the sale, offering, storing or exposing for sale of liquors is carried on clandestinely, or in such manner that the person so selling, offering, exposing, keeping or storing for sale, cannot be seen or identified by the officer or officers charged with the execution of a warrant issued under sections ten and eleven of this act, any such officer may, whenever it is necessary for the arrest or identification of the person so offending, or the seizing of such liquor, break open and enter such house, building or place.

Sec. 13. The payment of the special tax required of liquor dealers by the United States by any person, or persons other than druggists, within the state, shall be *prima facie* evidence that such person, or persons, are engaged in keeping and selling, offering and exposing for sale, liquors contrary to the laws of this state, and a certificate from the collector of internal revenue, his agents, clerks or deputies, showing the payment of such tax, and the name or names of person to whom issued, and the names of the person or persons, if any, associated with the person to whom such tax receipt is issued, shall be sufficient evidence of the payment of such tax, and of the association of such persons for the selling and keeping, offering and exposing for sale of liquors contrary to the provisions of this act in all trials or legal inquiries.

Sec. 14. All houses, boat houses, buildings, club rooms and places of every description, including drug stores, where intoxicating liquors are manufactured, stored, sold or vended, given away or furnished contrary to law (including those in which clubs, orders or associations sell, barter, give away, distribute or dispense intoxicating liquors to their members, by any means or device whatever, as provided in section six of this act) shall be held, taken and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months for each offense, and judgment shall be given that such house, build-

ing or other place, or any room therein, be abated or closed up as a place for the sale or keeping of such liquors contrary to law, as the court may determine.

Sec. 15. The state tax commissioner shall be *ex officio* state commissioner of prohibition. Wherever the word "commissioner" is used in this act, it shall mean and be taken to mean the state commissioner of prohibition.

Sec. 16. It shall be the duty of the commissioner, his deputies and agents, to superintend the enforcement of all provisions of this act, and laws of this state affecting the manufacture, sale, keeping, exposing or offering for sale, or giving or soliciting or receiving orders for liquors, or laws connected in any way with the liquor traffic, to diligently inform themselves of all violations of such laws and either make report thereof to the prosecuting attorney of the proper county, who shall forthwith prosecute the same as provided by law, or said commissioner, his agents or deputies, shall make complaint of any violations of any such laws before the proper court or committing justice, and conduct the prosecution thereof in any court in the state having jurisdiction of such matters; and for the purpose of enforcing such laws, the said commissioner, his agents and deputies, shall have all the powers now vested in the prosecuting attorneys of this state and the attorney general thereof, and of sheriffs, their deputies, and constables and police officers of the state. *Provided*, that nothing in this act shall be construed to take from such prosecuting attorneys or the attorney general, or his assistants, any of the powers now conferred upon them by law, except as herein provided, or to relieve any of the said officers from any duty imposed upon him by any statute of this state.

Sec. 17. The commissioner, his agents and deputies, and the attorney general, prosecuting attorney, or any citizen of the county where such a nuisance as is defined in section fourteen of this act exists, or is kept or maintained, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same, and courts of equity shall have jurisdiction thereof. The injunction shall be granted at the commencement of the action and no bond shall be required.

It shall not be necessary for the court to find that the premises involved were being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the bill are true, the court shall order that no liquors shall be sold, bartered, given

away, distributed, dispensed or stored in such house, building, boat house, club room or other place, nor in any part thereof, for a period of not to exceed one year in the discretion of the court from and after such finding, in case of a drug store; in other cases the order for abatement shall be perpetual.

Any person violating the terms of any injunction granted in proceedings hereunder shall be punished for contempt summarily by the court without the empanelling of any jury to try the same, by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months, in the discretion of the court or judge thereof in vacation. In case decree is rendered in favor of the plaintiff in any action brought under the provisions of this section, the court entering the same shall also enter decree for a reasonable attorney's fee in such action in favor of the plaintiff against the defendants therein, which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney, or attorneys of the plaintiff therein.

Sec. 18. In addition to the penalties prescribed for violation of any of the provisions of sections two to sixteen, inclusive, of this act, the court may in its discretion, when such conviction is had, require the defendant to execute bond with good security to be approved by the court or clerk thereof, in the penalty of one thousand dollars, conditioned not to violate any of the provisions of any of said sections for the term of two years, and in default of such bond may commit the defendant to jail for said term of two years, unless such bond be sooner given.

Sec. 19. All express companies, railroad companies and transportation companies within this state are hereby required to keep books in which shall be entered immediately upon receipt thereof the name of every person to whom liquors are shipped; the amount and kind received; the date when delivered, and by whom, and to whom delivered, after which record shall be a blank space in which the consignee shall be required to sign his name in person to such record, which book shall be open to the inspection of any state, county or municipal officer in this state, at any time during business hours of the company. Such books shall constitute *prima facie* evidence of the facts therein stated, and be admissible as evidence in any court in this state having jurisdiction, or in any manner empowered with the enforcement of the provisions of this act. Any employe or agent



of any express company, railroad company or transportation company knowingly failing or refusing to comply with the provisions of this section, shall be guilty of a misdemeanor and punished by a fine of not less than fifty nor more than one hundred dollars and may be imprisoned in the county jail not less than thirty days nor more than six months.

Sec. 20. Any citizen or organization within this state may employ an attorney to assist the prosecuting attorney to perform his duties under this act, and such attorney shall be recognized by the prosecuting attorney and the court as associate counsel in the proceedings; and no prosecution shall be dismissed over the objection of such associate counsel until the reasons of such prosecuting attorney for such dismissal, together with the objections thereof of such associate counsel, shall have been filed in writing, argued by counsel, and fully considered by the court.

Sec. 21. The prosecuting attorney of any county, with the approval of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund in the same manner as other county expenses are paid.

Sec. 22. In all cases arising under this statute the state shall have the right to appeal.

Sec. 23. This entire act shall be deemed an exercise of the police powers of the state for the protection of public health, peace and morals, and all of its provisions shall be liberally construed for the attainment of that purpose.

Sec. 24. The manufacture of alcohol, wine and liquors, and the sale of the same by the manufacturer and by wholesale druggists, shall be under the supervision of the commissioner and under such rules and regulations as he may from time to time prescribe.

Sec. 25. Paragraphs b, c, d, h and y of section one, and section ten, section forty, section sixty-six, section seventy-four, section seventy-seven, sections eighty-seven, eighty-eight, eighty-eight-a, section ninety-two and section one hundred and twenty-a of the code of one thousand nine hundred and six, as amended and re-enacted by chapter eighty-two of the acts of one thousand nine hundred and seven, and sections eighty-seven, eighty-seven-a and section one hundred and



twenty-a of chapter sixty-eight of the acts of one thousand nine hundred and nine, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 26. All of the provisions of this act shall take effect on the first day of July, one thousand nine hundred and fourteen.

## INTERPRETATIONS.

### CLUBS.

Under sections 6 and 14 of the Yost Law, clubs and associations cannot keep, and will not be permitted to keep intoxicating liquors of any kind about their premises, nor can any individual member of such clubs or associations have or keep for his personal use liquors of any kind at club houses or houses belonging to associations of like kind.

### TRANSPORTATION COMPANIES—INCLUDING STEAMBOATS.

Under section 19, express companies, railroad companies and transportation companies, including steamboats and other freight- or express-carrying vessels, must keep special records, approved by the commissioner of prohibition, showing the receipt of liquors, the kind and quantity, the names of the consignor and consignee, the date when delivered, by whom delivered and by whom received; such record must be signed in person by the consignee. None of such transportation companies, including steamboats and other freight- and express-carrying vessels, will be permitted to receive liquors at any point for delivery to another point in the state when the transportation company, including steamboats and other freight- and express-carrying vessels, does not have a regular agent at point of destination in charge of such special record. In other words, transportation com-

panies, including steamboats and other freight- and express-carrying vessels, cannot legally receive consignments for delivery and make delivery of liquors at stations in this state where there is no regular agent in charge to keep and preserve for inspection the special record prescribed.

#### DISTILLERIES.

That no rules and regulations, under section 24, will be made permitting a distillery to manufacture and sell any spirituous liquors in the state, nor to sell the same out of the state, except pure grain alcohol for medicinal, mechanical, pharmaceutical and scientific purposes, and wine for sacramental purposes by religious bodies, and the sales thereof limited to druggists only.

SUBJECT: FLAVORING EXTRACTS, ETC.

THOMAS J. DAVIS, Esq.,  
Attorney at Law,  
Harrisville, W. Va.

February 6, 1914.

Dear Sir:

I have your letter of the 30th ult., and note you inquire:

"Will it be unlawful after July first for merchants to retail flavoring extracts and such other drugs as they generally handle because the same always contain from one-half to one per cent. alcohol?"

Answering, beg to say that flavoring extracts containing alcohol, such as vanilla, lemon, etc., and used for culinary and confectionery purposes, may be sold by merchants. This general statement must be qualified, however, in this: such extracts *must not be kept for sale, nor sold, as beverages*. If any such extracts are kept for sale as beverages, or are sold to be used as *beverages*, the seller is subject to prosecution; again, although not kept for sale as beverages, nor sold as beverages, yet if such extracts are so prepared that they will produce *intoxication*, the seller will be liable to prosecution. Perfumes and other preparations containing alcohol, kept and sold as such, in

good faith, and not for purposes of evasion, and which by the nature of their ingredients cannot be used as *beverages*, and will not produce *intoxication* may be sold.

As to patent medicines: I enclose copy of letter this day written to J. M. George, Secretary of the Inter-State Manufacturing Association, Winona, Minn., in answer to his inquiry relating to sales of patent medicines by merchants.

The Prohibition Act does not materially change the present statute relating to extracts, perfumes, and patent medicines, except to more clearly define *beverages*, impose more severe penalties, and provide additional means to enforce the law. The courts have experienced little difficulty in construing the present law.

Yours very truly,

FRED. O. BLUE,  
State Tax Commissioner.

SUBJECT: PATENT MEDICINES.

J. M. GEORGE, Esq.,

February 6, 1914.

Sec'y Inter-State Mfrs. Assn.,

Winona, Minn.

Dear Sir:

I have your inquiry of the 28th ult., and answering beg to say:

First: That any *beverages* containing as much as one-half of one per cent. of alcohol by volume cannot be sold either by merchant or druggist. Some mixtures and preparations, patented or otherwise, containing as much as one-half of one per cent. of alcohol by volume, under the guise of medicines, are made expressly to be used and sold as beverages, or if not expressly made to be so used, can be and are used as beverages. Such mixtures and preparations *cannot be sold either by merchants or druggists*. The manufacturers of such mixtures and preparations who attempt in any way to solicit or sell such mixtures or preparations in this state will be liable to prosecution.

Second. Mixtures and preparations, patented or otherwise, containing alcohol, manufactured and sold in good faith as proprietary mixtures and preparations, to be used as medicines only, may be sold by merchants; provided such mixtures and preparations *will not produce intoxication, nor be sold and used as beverages*.

Yours very truly,

FRED. O. BLUE,  
State Tax Commissioner.

## REMOVAL OF STOCK.

Request having been made for interpretation as to when stock must be removed from saloons, replies were given, per copy of the two following letters. The names of the addressees are withheld.

December 13, 1913.

Dear Sir:

I beg to acknowledge receipt of yours of the 6th inst., saying that you have made arrangements with all distillers with whom you do business, that after June 30, 1914, they will take the liquors you have on hand at the price paid them when you bought,—this transaction to be after June 30, 1914, and inquiring if my interpretation of the Yost bill will permit this to be done.

Replying thereto, beg to say that my interpretation of the Yost bill *will not* permit this to be done.

The prohibition amendment and the Yost Bill, in pursuance thereto, mean that on and after the first day of July, 1914, the manufacture, sale and keeping for sale of liquors in West Virginia will be prohibited.

Let us all understand what the prohibition amendment means, and act accordingly. In my judgment, to carry out the transaction you suggest would be a sale of liquors in West Virginia, and a violation of the law.

To be plain and to the point, you will be required to dispose of your liquors not later than midnight the 30th day of June, 1914,—have signs down and your bars closed on or before midnight, June 30, 1914. You had, therefore, better make sales to liquor dealers before the first day of July, 1914.

Very truly yours,

FRED. O. BLUE,

*State Tax Commissioner.*

B/L

February 12, 1914.

Dear Sir:

I have yours of the 11th inst., saying that you are engaged in the liquor business both at Clarksburg, W. Va., and at Cumberland, Md., and inquiring if you can ship any of your stock left over after June 30, from Clarksburg to Cumberland, or will you be compelled to ship your stock before July 1st. You say you are not selling them, but

simply transferring them to another location, and asking my opinion relative to the questions in your letter.

Replying to your questions, beg to say:

It will be *unlawful* for you to have such stock in West Virginia, for the purposes named in your letter, after midnight of June 30, 1914. It may be true that you are not keeping these liquors in West Virginia for sale in West Virginia, but you are keeping and storing them in West Virginia for the purpose of taking them to Maryland and then selling them. In other words, you are keeping and storing in West Virginia liquors for sale—true, not in West Virginia, as you say, but nevertheless you are storing them in West Virginia for the purpose of ultimately making sale. The statute not only forbids the sale of intoxicating liquors in West Virginia, but forbids the keeping or storing of liquors in West Virginia for sale, either in the state or out of the state. Therefore, there is only one safe thing for you to do, and that is, to get your liquors out of the state before midnight of June 30, 1914.

Yours very truly,

FRED. O. BLUE,  
*State Tax Commissioner.*

FOB/NL

#### BREWERIES.

Request having been made by counsel for one of the breweries in the state as to the interpretation of the Yost Law respecting breweries, reply was made per copy of letter below. The name of the addressee is withheld.

Dear Sir:

December 1, 1913.

Replying to your letter of October 26, last, beg to say, I understand from your letter the question to be:

Does the correct interpretation of the Prohibition Amendment and chapter 13, Acts 1913, permit a brewer to keep in storage at the place where made for a reasonable time after July first, 1914, beer manufactured before July 1,

1914; such beer to be kept in such storage not for the purpose of sale in this state, but until the same can be removed into storage in another state, and sold therefrom.

In my opinion, said amendment and said act are not subject to such interpretation; section 11, chapter 13, makes the storage, in case of search, *prima facie* evidence of "the unlawful selling and keeping and storing for sale of the same"; and the finding of a government license in the room searched likewise *prima facie* evidence of such unlawful selling, keeping and storing for sale. Your client would be required to have a government license. Again: to keep in storage, not for personal use, but for the purpose of removing to storage in another state, from which latter sale and distribution will be made, in my opinion is keeping and storing for sale, within the meaning of the amendment and the act.

Notice of one year and a half has been given of the state's purpose, after July first next, respecting the manufacture, sale and storing of spirituous and malt liquors within the state—and that purpose is, that on and after July first next, the state shall be dry.

With highest regards, believe me,

Very sincerely yours,

FRED. O. BLUE.

State Tax Commissioner.

### FORMS.

C. P. Form 2—Prescribed by Commissioner of Prohibition and Approved by the State Board of Health and the West Virginia Pharmaceutical Association.

#### AFFIDAVIT TO BE USED BY RETAIL DRUGGISTS IN THE SALE OF ALCOHOL.

State of West Virginia,

No. ....

County of ....., to-wit:

This day personally appeared before the undersigned authority in and for said County of ....., State of West Virginia, ....., who says that he (or she) is a person over the (name of affiant)

age of twenty-one years and is not of intemperate habits and is not addicted to the use of any narcotic drug; that he (or she) desires to purchase at ..... drug store in the town, or city, of ..... in ..... County, West Virginia, ..... ALCOHOL; and that the said alcohol is to be used (here state quantity)

.....

(here state fully for what purpose, when, where, and by whom the said  
alcohol so purchased, is to be used)

and that said alcohol is not to be used as a beverage, or for any purpose  
other than that stated in this affidavit.

Sworn to and subscribed before me this.....day of  
....., 19....

Druggist or Registered Pharmacist.

NOTE: For the purpose of making the foregoing affidavit, a druggist  
or registered pharmacist is empowered to administer oath.

Forms for record books to be kept by retail druggists will be fur-  
nished on application.

C. P. Form 3—Prescribed by Commissioner of Prohibition and Approved  
by the State Board of Health and the West Virginia  
Pharmaceutical Association.

# AFFIDAVIT TO BE USED BY RETAIL DRUGGISTS IN THE SALE OF WINE.

State of West Virginia,

No.....

County of....., to-wit:

This day personally appeared before the undersigned authority in  
and for said County of ....., State of West Virginia,  
....., who says that he (or she) is a person over the  
(name of affiant)

age of twenty-one years and is not of intemperate habits and is not ad-  
dicted to the use of any narcotic drug; that he (or she) desires to pur-  
chase at ..... drug store in the town, or city, of  
..... in ..... County, West Virginia,  
..... Wine; and that said wine is to be used for sacramental  
(state quantity)

purposes.....  
(here state when, where, and by whom, the said wine, so purchased, is  
to be used)

and that said wine is not to be used as a beverage, or for any purpose  
other than that stated in this affidavit.

Sworn to and subscribed before me this.....day of  
....., 19....

Druggist or Registered Pharmacist.

NOTE: For the purpose of making the foregoing affidavit, a druggist  
or registered pharmacist is empowered to administer oath.

This affidavit should be on pink paper, to distinguish from the one  
used for alcohol.

C. P. Form 1.—Prescribed by Commissioner of Prohibition and Approved by  
the State Board of Health and the West Virginia Pharma-  
ceutical Association.

No.....

PREScription FOR ALCOHOL.

Rx

....., 191....

The amount of alcohol prescribed in the foregoing prescription is to be  
used for .....  
(State injury, malady, or disease for which prescribed)  
and is to be used.....; that said alcohol is prescribed for  
(state how to be used)

.....; that the undersigned physician  
(Name of Patient)  
has previously prescribed for said patient, within the year next preceding  
this prescription,..... prescriptions; and that the alcohol herein  
(Number)

prescribed is absolutely necessary for medicine and is not to be used as a  
beverage; that the undersigned physician, at the time of giving this pre-  
scription, made a personal examination of such person and that he (or she)  
is known to the undersigned physician to be of temperate habits and not  
addicted to the use of any narcotic drug.

.....M. D.

NOTE—It is suggested that these be printed in book form so that stubs  
can be preserved.

C. P. Form 1

STUB

No. ....19....

To.....  
(Name of Druggist)

For.....  
(Name of Patient)

Grain Alcohol.....  
(Quantity)

..... M. D.



C. P. Form 10.

# COMPLAINT FOR SELLING LIQUORS UNLAWFULLY.

State of West Virginia,

County of ....., to-wit:

Personally appeared before me the undersigned authority, in and for the county aforesaid, ....., who being by me first  
(name of complainant)

duly sworn, under oath, complains and says that on the ..... day  
of ....., 19...., in said county aforesaid,.....  
(name of accused)

did unlawfully manufacture, sell, offer, expose, keep or store for sale, or barter, intoxicating liquors as defined by section one, chapter thirteen, Acts of the legislature 1913, contrary to the laws of the State of West Virginia, and he, the said....., therefore prays  
(name of complainant)

that the said ....., may be apprehended and held  
(name of accused)

to answer said complaint and further dealt with according to law.

Dated this ..... day of ....., 19....

.....  
(name of person making complaint)

Taken, subscribed and sworn to before me this ..... day of  
....., 19....

.....  
(name of officer)

.....  
(title of officer before whom complaint is made)

NOTE—If made upon information insert and interline words "upon information" after the word "sworn".

# WARRANT FOR SELLING LIQUORS UNLAWFULLY.

State of West Virginia,

County of ....., to-wit:

To ....., or any constable of said county:

Whereas, ....., has this day made complaint  
(name of complainant)

on oath, before me, ....., a justice of the peace of said  
(name of officer)

county, that ..... on the ..... day of .....  
(name of accused)

19....., in said county aforesaid, did unlawfully manufacture, sell, offer, expose, keep or store for sale, or barter, intoxicating liquors, as defined by section one of chapter thirteen, Acts of 1913, contrary to the laws of the State of West Virginia: These are therefore to command you, in the name of the State of West Virginia, forthwith to apprehend the said ....., and bring him before me, or some other  
(name of accused)

justice of the said county, to answer the said complaint and to be further dealt with according to law.

Given under my hand this ..... day of ..... 19.....

Justice of the Peace for the County of.....

NOTE:—This form may be used by a mayor, by substituting title as such and inserting his municipality and may by him be directed to designated officer of town or city.

C. P. Form 11.

**COMPLAINT FOR SELLING LIQUORS UNLAWFULLY AND FOR SEARCH AND SEIZURE.**

State of West Virginia,

County of ....., to-wit:

Personally appeared before me the undersigned authority, in and for the county aforesaid, ....., who being by me first

(name of complainant)

duly sworn, under oath, complains and says that on the ..... day of ....., 191....., in the county aforesaid, .....

(name of accused)

did unlawfully manufacture, sell, offer, expose, keep or store for sale or barter, intoxicating liquors as defined by section one of chapter thirteen, acts of the legislature of 1913, contrary to the laws of the State of West Virginia; and the said complainant as aforesaid, upon oath, further complains that he has cause to believe and does believe that such liquors as aforesaid, in said county aforesaid, are manufactured, sold, offered, exposed, kept or stored for sale or barter in that certain

(Here describe with full particularity, the house, building, boat, or other place, and location thereof)

contrary to the laws of the State of West Virginia; and he, said ....., therefore prays that the said

(name of person making complaint)

..... may be apprehended and held to

(name of person accused)

answer said complaint and dealt with according to law; and that the said ..... aforesaid, be

(house, building, or other place described)

searched, and that all liquors found therein, together with all vessels, bar fixtures, screens, glasses, bottles, jugs and other appurtenances apparently used in the sale, keeping or storing of liquors contrary to law,

be seized and held to be further dealt with according to law; and that all parties found in said building aforesaid be arrested, held and further dealt with according to law.

Dated this ..... day of ....., 191....

.....  
(name of person making complaint)

Taken, subscribed and sworn to before me this ..... day of ..... 191....

.....  
(name of officer)

.....  
(title of officer before whom complaint is made)

NOTE:—If made upon information insert and interline words "upon information" after the word "sworn".

This form may be used by a mayor by substituting title as such and inserting his municipality, and may be directed to designated officer of town or city.

#### WARRANT FOR ARREST, SEARCH AND SEIZURE.

State of West Virginia,

County of ....., to-wit:

To ....., or any constable of said county:

Whereas, ..... has made complaint, on oath, before  
(name of complainant)

me, ....., a Justice of the Peace of said county, that  
(name of officer)

..... on the ..... day of .....  
(name of accused)

19...., in said county aforesaid, did unlawfully manufacture, sell, offer, expose, keep or store for sale, or barter, intoxicating liquors as defined by section one, chapter thirteen, Acts 1913, contrary to the laws of the State of West Virginia, and did further make complaint, on oath, before me, that he has cause to believe and does believe that such liquors as aforesaid, in said county aforesaid, are manufactured, sold, offered, exposed, kept or stored for sale or barter in that certain.....

(here describe with full particularity

.....  
the building, house, boat, or other place and location thereof)

in said county aforesaid, contrary to the laws of the State of West Virginia. These are therefore to command you, in the name of the State of West Virginia, forthwith to apprehend the said.....

(name of accused)

and bring him before me, or some other justice of said county, to answer said complaint and to be further dealt with according to law: and these are, to command you further, in the name of the State of West Virginia forthwith to enter that certain.....

(here describe with full par-

.....

ticularity the building, house, boat, or other place and location thereof) in said county aforesaid, and there search and seize all liquors found therein, together with all vessels, bar fixtures, screens, glasses, bottles, jugs, and other appurtenances apparently used in the sale, keeping or storing of liquors contrary to law, and to hold the same to be further dealt with according to law: and these are to command you further, in the name of the State of West Virginia, to arrest all parties and persons found in said premises aforesaid and bring them before me or some other justice of said county, to answer the said complaint and to be further dealt with according to law.

Given under my hand this ..... day of ....., 19.....

Justice of the Peace of the County of.....

NOTE:—This form may be used by a mayor, by substituting title as such and inserting his municipality, and may by him be directed to designated officer of town or city.

#### C. P. Form 12.

#### COMPLAINT FOR SEARCH AND SEIZURE.

State of West Virginia,

County of ....., to-wit:

Personally appeared before me the undersigned authority, in and for the said county aforesaid, ....., who being by me first  
(name of complainant)

duly sworn, under oath, complains and says that he has cause to believe, and does believe, that intoxicating liquors, as defined by section one, chapter thirteen, Acts of the legislature 1913, are being manufactured, sold, offered, exposed, kept or stored for sale, or bartered in said county aforesaid in that certain .....

(here describe with full particularity the

building, house, boat, or other place and location thereof)

contrary to the laws of the State of West Virginia, and he, said  
..... therefore prays that the said  
(name of complainant)

(here describe building, house, boat or other place and location thereof)

be searched, and that all liquors found therein, together with all vessels, bar fixtures, screens, glasses, bottles, jugs and other appurtenances apparently used in the sale, keeping or storing of liquors, contrary to law, be seized and held to be further dealt with according to law; and that

all parties or persons found in said.....  
 (here describe building, house,  
 boat, or other place and location thereof)

.....  
 aforesaid be arrested and held, and further dealt with according to law.

Dated this..... day of ....., 19.....

.....  
 (name of complainant)

Taken, subscribed and sworn to before me this ..... day of  
 ....., 19.....

.....  
 (name of officer)

.....  
 (title of officer before whom complaint is made)

NOTE:—This form may be used by justice or mayor.

This form of complaint and warrant to be used when complainant  
 does not know name of parties suspected of selling, etc.

#### WARRANT FOR SEARCH AND SEIZURE.

State of West Virginia,

County of ....., to-wit:

To ....., or any constable of said county:

Whereas, ....., has made complaint on oath, before me,  
 (name of complainant)

....., a justice of the peace of said county, that he  
 (name of officer)

has cause to believe, and does believe that intoxicating liquors as defined  
 by section one, chapter thirteen, Acts of the legislature of one thousand  
 nine hundred and thirteen, are being manufactured, sold, offered, exposed,  
 kept or stored for sale, or bartered, in said county aforesaid, in that  
 certain .....

(here describe with full particularity the building, house, boat

.....  
 or other place, and location thereof)

contrary to the laws of the State of West Virginia: These are therefore  
 to command you, in the name of the State of West Virginia, forthwith to  
 enter that certain .....

(here describe with full particularity the building,

.....  
 house, boat, or other place and location thereof)

in said county aforesaid, and there search and seize all liquors found  
 therein, together with all vessels, bar fixtures, screens, glasses, bottles,  
 jugs, and other appurtenances apparently used in the sale, keeping or  
 storing of liquors contrary to law, and to hold the same to be further  
 dealt with according to law: And these are to command you further, in  
 the name of the State of West Virginia, to arrest all parties and persons  
 found in said premises aforesaid and above described and bring them

before me, or some other justice of said county, to answer the said complaint, and to be further dealt with according to law.

Given under my hand this ..... day of ....., 19.....

Justice of the Peace for the County of.....

NOTE:—This form may be used by a mayor, by substituting title as such, and his municipality, and may by him be directed to designated officer of town or city.

C. P. Form 14.

# BOND TO HOLD TO GRAND JURY.

State of West Virginia,

County of .....

KNOW ALL MEN BY THESE PRESENTS: That we,.....

..... and .....

(name of accused)

(name of surety)

are held and firmly bound unto the State of West Virginia in the just and full sum of \$..... for the payment whereof well (not less than \$500.00)

and truly to make, we bind ourselves, our personal representatives, our heirs and assigns, jointly and severally, firmly by these presents;

Witness our hands and seals this ..... day of....., 19.....

THE CONDITION of the above obligation is such that whereas, the above bound .....

(name of accused)

has been arrested and brought before me....., a justice of the peace of said county, charged with selling intoxicating liquors, as defined by section one of chapter thirteen of the acts of the legislature of one thousand nine hundred and thirteen, in said county aforesaid, contrary to the laws of the State of West Virginia, and upon examination of the said accused, it appears that there is probable cause to believe him guilty of the offense as charged, and accordingly he has been held to answer any indictment that may be returned by the grand jury of said county.

Now, therefore, if the said .....

(name of accused)

shall appear in person before the .....

(Circuit, Criminal or Intermediate)

Court of said county on the first day of the next term thereof, and not depart the court without its leave, to answer an indictment, if one be preferred against him, and to abide by and perform the further order

of said court in relation thereto, then this obligation to be void; otherwise to remain in full force and virtue.

..... (Seal)

(name of accused)

..... (Seal)

(name of surety)

Entered into before and approved by me this ..... day of  
....., 19.....

.....  
(Justice of the Peace of said county)

NOTE:—This form may be used by a mayor by substituting title and inserting municipality.

C. P. Form 15.

# BOND NOT TO SELL.

State of West Virginia,

County of .....

KNOW ALL MEN BY THESE PRESENTS: That we,.....  
..... and .....

(name of accused)

(name of surety)

are held and firmly bound unto the State of West Virginia in the just and full sum of FIVE HUNDRED DOLLARS, for the payment whereof well and truly to make, we bind ourselves, our personal representatives, our heirs and assigns, jointly and severally, firmly by these presents:

Witness our hands and seals this ..... day of....., 19.....

THE CONDITION of the above obligation is such that whereas, the above bound .....has been arrested

(name of accused)

and was this day brought before me.....

a Justice of the Peace of said county, charged with unlawfully selling intoxicating liquors, as defined by section one of chapter thirteen of the acts of the legislature of one thousand nine hundred and thirteen, in said county, contrary to the laws of the State of West Virginia, and upon examination of said ..... it appears

(name of accused)

that there is probable cause to believe him guilty of the offense so charged, and accordingly he has been held to answer any indictment that may be returned by the grand jury of said county.

Now, therefore, if the said .....

(name of accused)

shall not violate any of the provisions of chapter thirteen, acts of the legislature one thousand nine hundred and thirteen, during the time

intervening between the date of this bond and the adjournment of the next grand jury term of the ..... Court of  
(Circuit, Criminal or Intermediate)  
said county, then this obligation to be void; otherwise to remain in full force and virtue.

.....(Seal)  
(name of accused)

.....(Seal)  
(name of surety)

Entered into before and approved by me this ..... day of  
....., 19.....

.....  
(Justice of the Peace of said county)

NOTE:—This form may be used by a mayor by substituting title and inserting municipality.

This bond must be given in addition to bond for appearance in Court, in default of this bond accused must be committed to jail. Sec. 10.

**RULES AND REGULATIONS MADE BY THE COMMISSIONER  
OF PROHIBITION FOR THE SALE OF ALCOHOL AND WINE  
as Provided for by Sections Four and Twenty-four, Acts of One  
Thousand Nine Hundred and Thirteen.**

Prescribed by State Commissioner of Prohibition. Approved by  
State Board of Health and West Virginia Pharmaceutical Association.

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First: A wholesale druggist within the meaning of these rules,  
is one whose business is that of generally selling at wholesale to re-



tail druggists, in good faith and not for the purpose of evading the prohibition laws of the state, or aiding or abetting others in violating the same, by any scheme or device whatsoever; any such wholesaler desiring to do business in this state and who has made application in writing to the state commissioner of prohibition, and has received from him a permit in writing to do so, may sell to retail druggists as they are hereinafter defined, alcohol for medicinal, pharmaceutical, mechanical or scientific purposes and wine for sacramental purposes, by complying with the rules and regulations prescribed by the commissioner of prohibition.

Second: A retail druggist within the meaning of these rules, shall be defined as one who generally sells drugs and pharmaceuticals at retail, and who is a registered pharmacist, or who employs a registered pharmacist, and who has applied to, and received from, the proper authorities of his county, permission and license, as required by law, to carry on the business of a retail druggist, and one who conducts such business in good faith and according to law, and not for the purpose of selling intoxicating liquors of any kind in violation of law.

Third: A special record, the form of which shall be prescribed by the commissioner of prohibition, of all sales, shall be kept by such wholesale druggist who has received such permit aforesaid, which will show the names and locations of parties to whom sold, quantity and kind of alcohol and wine; and a written report shall be made from such record to the commissioner of prohibition not later than the tenth day of each month, showing all such sales for the preceding month, to whom sold, his location, and the quantity and kind sold; and such report shall be sworn to by the owner, manager or party actually in charge of such wholesale drug store; and in said affidavit shall be stated, that the accompanying report is true in every particular, and that it contains a complete list of all sales made by such wholesale druggist, and that to the best of his knowledge and belief, all of such alcohol and wine so bought by the purchaser, was sold or used in good faith, and not sold or used in violation of law governing the use and sale of intoxicating liquors.

Fourth: The commissioner of prohibition reserves the right to notify such wholesale druggist not to sell alcohol or wine to any retail druggist whom he has reason to believe is violating the law, or for any other reasons, to the commissioner of prohibition, deemed proper; and upon such notice to such wholesale druggist, in writing, he shall

at once discontinue selling to such retail druggist, and a sale made to such retail druggist, after such notice is given, shall be deemed a sale made contrary to law.

Fifth: The commissioner of prohibition reserves the right to revoke or suspend any permit granted to a wholesale druggist who he has reason to believe is selling contrary to the rules herein named, or in violation of the law regulating the sale of intoxicating liquors; and a sale of alcohol or wine made by such wholesale druggist after such permit is revoked, shall be a sale contrary to law.

Note. Forms for records to be kept by wholesale druggists will be furnished on application.

## **DIGEST OF PROHIBITION LAW.**

### **ACT (PROHIBITION)**

Shall be deemed exercise powers of the State for protection of public health, peace and morals and its provisions shall be liberally construed for the attainment of that purpose. Sec. 23.

### **ADVERTISERS—ADVERTISEMENTS**

Advertising liquors for self or for another by signs, bill-boards, newspapers, periodicals, or otherwise, a misdemeanor. Sec. 8.

Circulating or distributing price lists, circulars or order blanks for advertising liquors, a misdemeanor. Sec. 8.

### **AGENTS**

Of the manufacturer, seller or person keeping, storing, offering or exposing for sale shall be deemed guilty of manufacturing, selling, keeping, offering and exposing for sale. One as agent for the purchaser of liquors shall be deemed guilty of manufacturing, selling, keeping, storing and exposing for sale of liquors. Sec. 3.

Of one having liquor in his possession, or of one named in a government license, presumed to be illegally selling or keeping for sale of liquors. Sec. 11.

Of railroads, express and transportation companies. See Common Carriers.

**ASSOCIATIONS**—See "Clubs." Also Sec. 6.

**ASSOCIATES**

Of a person named in government license, presumed to be illegally selling and keeping for sale of liquors: of occupant or proprietor of premises in which liquors are seized presumed to be illegally selling and keeping for sale of liquors. Sec. 11.

**ATTORNEY GENERAL**

May maintain suit in name of State to abate such nuisances as are defined in section 17. Sec. 14.

**BILL-BOARDS**

For advertisement of liquors, or on which liquors are advertised, a misdemeanor. Permitting such boards or other forms or methods of advertising to be posted, kept or maintained on one's premises makes him guilty of misdemeanor. Sec. 8.

**BOAT HOUSES**

Wherein intoxicating liquors are manufactured, stored, sold or vended, given away, or furnished contrary to law shall be held and deemed common and public nuisances and may be abated as such. Any person who shall maintain, aid or abet or knowingly be associated with others in maintaining such nuisances shall be fined and imprisoned. Sec. 14.

**BONDED WAREHOUSES**

United States bonded warehouses may store liquors manufactured in the state prior to July 1, 1914, in the custody of the United States collector of revenue, when tax is paid and said liquors in transit from such warehouses to points outside of state. Sec. 2.

**BUILDINGS**

Wherein intoxicating liquors are manufactured, stored, sold or vended, given away, or furnished contrary to law shall be held and deemed common and public nuisances and may be abated as such. Any person who shall maintain, aid or abet or knowingly be associated with others in maintaining such nuisances shall be fined and imprisoned. Sec. 14.

## CARRIERS

Unless a *common carrier*, a carrier is either agent of seller or purchaser and is guilty of selling and keeping for sale of liquors. Sec. 3.

A sale of liquors is deemed to be made in county *where delivery is made by the carrier*, whether common carrier or otherwise. Sec. 3.

## CARRIERS—COMMON

All express, railroad and transportation companies within the State required to keep books in which shall be entered immediately upon receipt thereof, the name of every person to whom liquor is shipped, the amount and kind, the date when delivered, by whom and to whom delivered, in which record the consignee shall sign his name in person. Such record shall be open to inspection of any State, county or municipal officer. Such books shall be *prima facie* evidence of the facts stated therein and be admissible as evidence in any court of the state in any manner empowered with the enforcement of the liquor laws. Any employe or agent of any express, railroad or transportation company, knowingly failing or refusing to comply with such requirements shall be guilty of misdemeanor punishable by fine or imprisonment or both. Sec. 19.

See interpretations hereof under "Interpretations," page 17.

## CIDER

By whom and for what purposes may be made. Sec. 4.

## CITIZENS

Acting as agent of seller or purchaser guilty of selling and keeping for sale of liquors. Sec. 3.

Delivery of liquors by, sale deemed to be made in county wherein delivery is made. Sec. 3.

May manufacture for his own domestic consumption wine or cider; may manufacture from fruit grown exclusively in the state vinegar and non-intoxicating cider for use or sale. Sec. 4.

If of intemperate habits or addicted to narcotic drugs and shall make affidavit to procure alcohol or wine, guilty of misdemeanor. Sec. 5.

If having made affidavit to procure alcohol or wine, for purposes stated therein, and then use such alcohol or wine as a bever-

age, or other purpose than that stated in affidavit, he is guilty of misdemeanor. Sec. 5.

Cannot keep liquors for *use, gift, sale, etc.*, at a club or any association with others. Sec. 6.

Keeping or giving away liquors by any shift or device to avoid the law shall be deemed unlawful selling. Sec. 7.

Liquors seized in any room, building or place occupied by a person, when warrant has been issued shall be *prima facie* evidence of the unlawful selling or keeping for sale by the person keeping such room, building, or place. Sec. 11.

Citizens may maintain suit to abate such nuisances as are defined in section 14; reasonable attorneys' fees for plaintiff's counsel in such suit, if decree is in favor of plaintiff shall be taxed as part of costs and collected from the defendant and when collected be paid to the attorney for plaintiff. Sec. 17.

Any citizen or organization within the State may employ an attorney to assist the prosecuting attorney in the performance of his duties under this act; such special attorney shall be recognized by the prosecuting attorney and court as associate counsel in the proceedings and no prosecution shall be dismissed over the objection of such associate counsel until the reasons of the prosecuting attorney therefor together with the objections thereto of such associate counsel shall be filed in writing, argued by counsel, and considered by the court. Sec. 20.

## CLUBS

Every person who shall directly or indirectly keep or maintain by himself or by associating with others, or in any manner aids, assists or abets in keeping or maintaining any club house in which liquor is received or kept for purpose of use, gift, barter or sale, shall be deemed guilty of misdemeanor punishable by fine and imprisonment. And every person who shall use, barter, sell or give away or assist or abet in bartering, selling or giving away any liquors so received or kept shall be deemed guilty of misdemeanor and punished as aforesaid. Shareholders or associates in any club or association shall be competent witnesses to prove any violations of the provisions of this act and shall not be excused from testifying as to any offense committed by another against the provisions of the act. Sec. 6.

See interpretation hereof under "Interpretations," page 17.

Any club or club room violating the provisions of the act shall be held and deemed a common and public nuisance. And any person who shall maintain such nuisance shall be deemed guilty of misdemeanor punishable by fine or imprisonment. And such club violating the provisions of the act shall be abated as a nuisance. Sec. 14.

#### COLLECTOR OF INTERNAL REVENUE

Certificate showing payment of the United States special tax required of liquor dealers is sufficient evidence of the payment of such tax by the person named therein, his associations, etc. Sec. 13.

#### COMMISSIONER OF PROHIBITION

The duty of: to supervise the enforcement of the laws effecting the sale of liquors. He, his deputies and agents, to report violations of the liquor laws to the prosecuting attorneys and report violations thereof to any court. And may conduct prosecutions in any court having jurisdiction. Invested with powers of prosecuting attorneys, Attorney General, and of sheriffs, their deputies, constables and police officers. Sec. 16.

He may maintain suit in equity to abate such nuisance as is defined in section 14. Sec. 17.

Manufacture of alcohol, wine and liquors and the sale thereof by the manufacturers and wholesale druggists to be under the supervision of the Commissioner and under such rules and regulations as he may prescribe. Sec. 24.

See interpretation of section 24, as to distilleries, under "Interpretations" page 18.

#### CONSTABLE

In executing warrant issued under the provisions of the act he may, when necessary for the arrest or identification of the person offending, or the seizure of liquors, break open and enter house, building or place. Sec. 12.

#### COUNTY COURTS

Shall pay, out of public funds, expenses for the detection of crime or rewards for apprehension of criminals, when the prosecuting attorney has, with the approval of the Governor, or court vested with the authority to try criminal cases in the county, or

the judge thereof in vacation, approved and authorized incurred expense for such detection or reward. Sec. 21.

#### **DISTILLERS (See Manufacturers)**

See "Interpretations", page 18.

#### **DRUGGISTS**

Retail druggists cannot sell malt or brewed drinks whether intoxicating or not; nor patent medicines or other preparations or liquors that will intoxicate. Nor any beverage containing so much as one-half of one per centum of alcohol by volume. Sec. 1.

Cannot sell absinthe or any drink compounded with it. Sec. 2.

May keep and sell pure grain alcohol for medicinal, pharmaceutical, mechanical and scientific purposes or any United States pharmacopeia or national formulary preparation in conformity with the West Virginia pharmacy law, or any preparation exempted by provisions of the national pure food law, the sale whereof does not require payment of a United States liquor dealer's tax. May sell wine for sacramental purposes. The sale of alcohol can only be made either on prescription (as required by law) of a reputable physician in good standing for medicinal purposes, or affidavit (required by law) of purchaser for pharmaceutical, mechanical and scientific purposes: the sale of wine for sacramental purposes can be made only on having affidavit (required by law) of purchaser. Offense to make sale otherwise. Offense to knowingly sell to a minor, or person of intemperate habits or addicted to the use of narcotic drugs or to be used for any purposes not stated in the prescription or affidavit. One sale only on a prescription or an affidavit. Druggists or pharmacists authorized to administer oath on affidavit. Prescriptions and affidavits to be kept filed by the druggists open to inspection. Sec. 4. See forms of prescriptions and affidavits, pages 22-24.

Wholesale druggists may sell pure grain alcohol to retail druggists for medicinal, pharmaceutical, scientific and mechanical purposes, and wine for sacramental purposes. Sec. 4.

Such sales by wholesale druggists under supervision of the Commissioner of Prohibition and rules and regulations prescribed by him. Sec. 24.

See "Rules and Regulations," pages 32-34.

## EXPRESS COMPANIES (See Common Carriers, under title of CARRIERS.)

### JUDGES

Of Circuit, Criminal and Intermediate courts, in term or vacation, upon information under oath that one is making, selling, keeping or storing for sale, liquors contrary to law, or that liquors are being made, sold, kept or stored for sale in building contrary to law, shall issue warrant requiring the person suspected to be brought before him for examination, or the building searched and the persons found therein to be brought before him for examination. And in same warrant issued require the officer to whom directed to seize, and hold, all liquors, fixtures, etc., found therein. Sec. 9.

If probable cause shown on examination, the accused to be held under bond in penalty of five hundred dollars to next grand jury. In default of bond to commit to jail. To recognize all material witnesses to appear before grand jury. To require accused to give bond in penalty of five hundred dollars conditioned not to violate liquor laws, and in default of such bond to commit accused to jail. Sec. 10.

To appoint some responsible person to immediately destroy liquors seized, upon conviction of accused. Sec. 11.

To summarily punish for contempt any person violating terms of any injunction granted in proceedings under the act, by fine of not less than one hundred nor more than five hundred dollars and by imprisonment in county jail not less than thirty days nor more than six months without impanelling jury to try same. Sec. 17.

Shall recognize special attorneys employed to assist prosecuting attorney. Shall dismiss no prosecution over objection of such special attorney unless reasons of prosecuting attorney to dismiss are filed in writing, the objections thereto of the special attorney filed in writing, and upon argument thereof by the court. Sec. 20.

### JUSTICES OF THE PEACE (See Judges—Secs. 9 and 10).

See forms of complaints and warrants and bonds, pages 25-32.

### LIQUORS. Defined. Sec. 1.



**MANUFACTURERS**

May make pure grain alcohol for sale at wholesale to retail druggists for medicinal, pharmaceutical, scientific and mechanical purposes, and wine for sacramental purposes by religious bodies. Sec. 4.

Such manufacturing and selling to be under such rules and regulations as may be prescribed by the Commissioner of Prohibition. Sec. 24.

Of patent medicines. See letter to J. M. George, Secretary, page 19.

**MAYORS** (See Judges—Secs. 9 and 10).

See forms of complaints and warrants and bonds, pages 25-32

**MERCHANTS**

Can not sell malt or brewed drinks whether intoxicating or not. This includes what are usually known as soft drinks, if the same are malted or brewed. Can not sell patent medicines or other preparations or liquors that will intoxicate, nor any beverage containing so much as one-half of one per centum of alcohol by volume. Sec. 1. See letter to J. M. George, secretary, page 19, and letter to T. J. Davis, page 18.

**NEWSPAPERS**

Can not advertise sale or keeping for sale of liquors and to do so is a misdemeanor. Sec. 8.

**PATENT MEDICINES.** See Merchants.

**PHARMACISTS** (See Druggists).

**PHYSICIANS**

May give prescription for pure grain alcohol, to be filled by druggists for medicinal purposes. Physician must be in good standing in his profession, not of intemperate habits nor addicted to the use of narcotic drugs. The prescription must state the amount of alcohol, disease or malady of patient, how much used, name of person for whom prescribed and number of previous prescriptions given by the physician to the person named, within one year preceding date of prescription; that the alcohol so prescribed is absolutely necessary as a medicine and not to be used as a beverage. That the physician made personal examination of the patient or

person and that he is known to the physician to be of temperate habits and not addicted to the use of any narcotic drug. Sec. 4.

If prescription not given within the requirements of section 4, or he shall fail to comply with any of the requirements thereof, he shall be deemed guilty of misdemeanor punishable by fine of not less than one hundred nor more than five hundred dollars and by imprisonment of not less than thirty days nor more than six months and, within the discretion of the court, suspension of six months of his license to practice. Sec. 5.

See form of prescription, page 24.

## POLICE

In executing warrant issued under the provisions of this act he may, when necessary for the arrest or identification of the person offending, or the seizure of liquors, break open and enter house, building or place. Sec. 12.

## PROSECUTING ATTORNEY

Must ascertain if offense is "first" offense or "second" offense. If second must so state in indictment and introduce record evidence. Sec. 3.

May maintain suit to abate such nuisance as is defined in section 14. Sec. 17.

Shall recognize special attorneys employed by any citizens or organization to assist in prosecutions under the act. No prosecution to be dismissed over the objection to such special attorney, etc. Sec. 20.

May, with approval of the Governor, or of the court of the county vested with authority to try criminal offenses, or of the Judge thereof in vacation, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Sec. 21.

## RAILROADS (See Carriers)

**SALOONISTS** See "Interpretations", letters, pages 20-21.

## SHERIFF

In executing warrant issued under provisions of the act he may, when necessary for the arrest or identification of the person of-

fending, or the seizure of liquors, break open and enter house, building or place. Sec. 12.

## SIGNBOARDS

For advertising sale or keeping for sale of liquors a misdemeanor. To maintain or permit same to be maintained on premises or premises under one's control a misdemeanor, punishable by fine of not less than one hundred nor more than five hundred dollars. Sec. 8.

## SODA FOUNTAINS

Can not sell what are known as soft drinks if *malted or brewed, whether intoxicating or not*. Sec. 1.

## SOLICITORS

Soliciting orders for liquors or absinthe is misdemeanor, for the first offense, a felony for the second offense. Sec. 3.

## STATE

In all cases arising under this statute the state has the right to appeal. Sec. 22.

## STATE TAX COMMISSIONER

Ex-officio State Commissioner of Prohibition. Sec. 15.

STEAMBOATS See Carriers. See "Interpretations", page 17.

WHOLESALE DRUGGISTS (See Druggists)